

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LYNNOTT ROGERS,

Petitioner,

v.

Case No. 15-C-682

DEBORAH MCCULLOUGH,

Respondent.

ORDER

Petitioner filed a petition seeking habeas corpus relief from a conviction dating to 1997. The petition raises a number of legal errors allegedly committed in context of that conviction, and the attachments set forth the history of appellate and other challenges to that conviction. I ordered the Petitioner to show cause why the petition was not untimely, given the one-year statute of limitations found in 28 U.S.C. § 2244(d).

Petitioner has responded by saying that he wishes to challenge not only the underlying conviction but also his 2014 involuntary confinement at Sand Ridge under Wisconsin's Chapter 980. If that is true, the Petitioner should file a petition under § 2254 challenging that confinement, rather than one challenging his 1997 conviction. He cannot litigate two habeas corpus challenges in the same action. Moreover, it does not appear that he has exhausted his state court remedies with respect to the 2014 confinement. An application for writ of habeas corpus from a person in state custody shall not be granted unless it appears that (a) the applicant has exhausted state remedies, or (b) there is no available state corrective process or circumstances exist that render such process

ineffective to protect the applicant's rights. 28 U.S.C. § 2254(b)(1). This requires the petitioner to appeal adverse state court decisions all the way to the state supreme court when doing so is part of the ordinary appellate review procedure in that state. *O'Sullivan v. Boerckel*, 526 U.S. 838, 847 (1999).

Accordingly, I conclude that the petition, which challenges the 1997 conviction, is untimely and therefore will be **DISMISSED**. The dismissal is without prejudice to any challenge to Petitioner's 2014 involuntary commitment.

SO ORDERED this 5th day of August, 2015.

/s William C. Griesbach
William C. Griesbach, Chief Judge
United States District Court